IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 395 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
GENDALBHAI PUJABHAI MACHHAR & 1 - Opponent(s)

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Appearance :
MR KP RAVAL APP for Appellant(s) : 1,
MR HARIN P RAVAL for Opponent(s) : 1,
MR YU MALIK for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/09/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 30.04.1994 passed by the learned Judicial Magistrate, First Class, Dakor in Criminal Case No.237 of 1989 whereby, the respondents – accused persons were acquitted from the offences

punishable u/s. 409 of the Indian Penal Code.

2.0 The brief facts of the prosecution case are as under ;

2.1 On 24.11.1988 respondent no. 2 herein, who was discharging his duties as a Postman at the Sevaliya Cement Works Factory Branch of the Postal Department, was handed over three bags of posts, including a bag containing an amount of Rs.15,000/- in cash, after completing the necessary procedure, by the Post-master for delivering the same up to the main-gate of the Factory where the Bus for dispatching the posts at the destination concerned used to arrive. At around 1400 hrs., the said Bus arrived at the main-gate of the Factory and after obtaining the signature of the Conductor of the said Bus, respondent no. 1 herein, on the Mail List, respondent no. 2 handed over the three bags in question, including the bag which contained cash of Rs.15,000/-, to respondent no. 1. Thereafter, the Bus left the said place and respondent no. 2 returned to the Post-office and handed over the Mail List to the Post-master.

2.2 At around 1500 hrs., respondent no. 2 was informed by the Post-master that the bag containing cash of Rs.15,000/- has been misplaced. Therefore, necessary investigation was carried out. However, since the said bag containing cash was not found out, a complaint u/s. 409 of the Indian Penal Code came to be filed against the respondents and, ultimately, trial was initiated. At the end of trial, the learned Magistrate acquitted the respondents from the offences alleged against them. Being aggrieved by the said

order passed by the learned Magistrate, the appellate – State has approached this Court by way of this appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated similar principle. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse

> and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

4.0 Having gone through the impugned order passed by the trial Court, it appears that the respondents have been acquitted from the alleged offence in question while granting them the benefit of doubt. The fact that respondent no. 2 has handed over all the three bags, including the bag containing the said amount of cash, to respondent no. 1 is evident from the Mail List, which is a document maintained by the Postal Department while dispatching the post-bags from one location to another. From the said Mail List, it is clearly established that respondent no. 2 has handed over the three bags, including the bag containing the amount of cash, to respondent no. 1, pursuant to which respondent no. 1 has also made necessary endorsement to that effect in the said Mail List.

5.0 From the record, it is further established that the bag in question containing cash of Rs.15,000/- went to the possession of respondent no. 1, when the same was handed over to him by respondent no. 2, after necessary endorsement to that effect was made by respondent no. 1 in the said Mail List. Thus, there is not an iota of evidence on record to connect respondent no. 2 with the crime in question even to the remotest possible extent. Moreover,

the respondent no. 2 was also found to be innocent in the Lie Detector Test conducted on him.

6.0 So far as the case of respondent no. 1 is concerned, he was the person who had taken custody of the three bags from respondent no. 2 after making necessary endorsement to that effect in the Mail List maintained by the Postal Department. It is a matter of record that the said three bags were dispatched only after following the necessary procedure before dispatching, i.e. sealing etc.. Therefore, when the said bags were handed over to respondent no. 1, naturally, respondent no. 1 would not have been aware as to the contents of the said three bags.

7.0 The trial Court, keeping in mind the aforesaid factual aspects, has acquitted the respondents from the alleged offences in question. Moreover, the prosecution has also not examined any of the passengers who had traveled in the said Bus at the relevant point of time in support of their case. Apart from that the factum of knowledge about the existence of cash to the tune of Rs.15,000/- in one of the said bags to any of the respondents is also not established.

8.0 Thus, considering the facts and circumstances of the case and the evidence discussed hereinabove, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the offences alleged against them. In my view, the findings recorded by the trial Court are absolutely just and proper

and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same. I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court. Expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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